

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

**UNITED STATES' RESPONSE TO THE COURT'S ORDER
REQUESTING STATUS UPDATE**

COMES NOW the United States of America (hereinafter “United States”), and in response to the District Court’s October 17, 2018 Order to inform the Court on the status of the case:

PROCEDURAL BACKGROUND

On June 30, 2008, the United States filed Civil Action No. 7:08-cv-203, condemning a fee simple interest in 0.61 acres, more or less, in Starr County, Texas—identified as Tract RGV-RGC-2006—for the border fence project. On July 1, 2008, the United States deposited \$4,000.00 into the Court’s registry as its estimated just compensation for Tract RGV-RGV-2006.¹ [Doc. No. 4]. On August 28, 2008, the United States deposited an additional \$600.00 into the Court’s registry. [Doc. No. 7]. At the time of taking, the United States believed that Ada and Catarion Escobar were the owners of Tract RGV-RGC-2006. [Doc. No. 2-2, at 14].

¹ See 40 U.S.C. § 3114(b) (“On filing the declaration of taking and depositing in the court, to the use of the persons entitled to the compensation, the amount of the estimated compensation stated in the declaration—(1) title to the estate or interest specified in the declaration vests in the Government; (2) the land is condemned and taken for the use of the Government; and (3) the right to just compensation for the land vests in the persons entitled to the compensation.”).

On December 24, 2008, the United States and Ada and Catarion Escobar filed their Agreement Concerning Just Compensation and Agreed Motion for Disbursement stating therein, among other things, that title examination results and metes and bounds surveys had not yet been completed. [Doc. No. 9; Doc. No. 10]. On December 29, 2008, the Court issued an Agreed Order to Disburse Funds in Registry, wherein the Court ordered that the sum of \$4,600.00, plus accrued interest, be disbursed to Ada and Catarion Escobar. [Doc. No. 11].

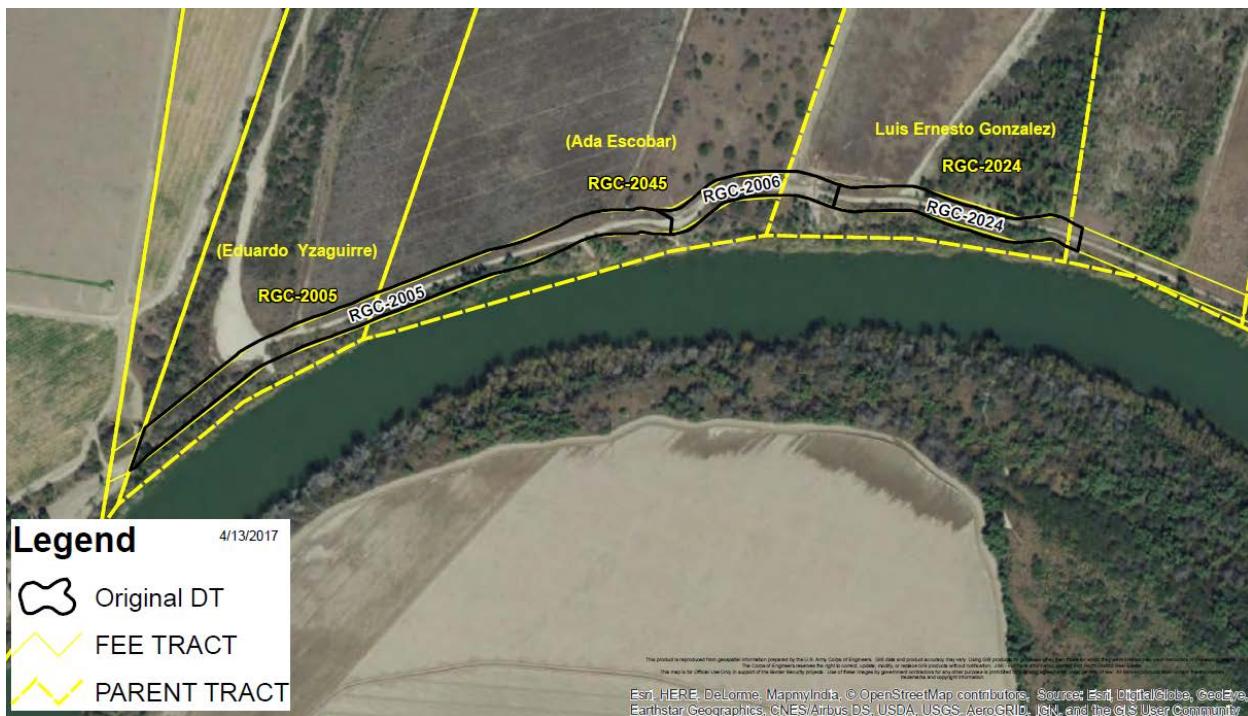
The United States filed status reports between 2010 and 2013. On July 21, 2010, the United States filed a status report, stating therein that although the United States and the landowners had settled the case, the case remained open pending the filing of an Amended Declaration of Taking (“ADT”) to clarify the description of the property taken. [Doc. No. 16]. On October 12, 2012, the United States and Escobar landowners filed a joint status report, explaining therein that the United States had not yet finalized its title commitment, land survey and fence alignment in order to file the ADT. [Doc. No. 23]. On August 29, 2013, the United States filed a supplemental status report, stating that it could not yet predict when the ADT would be filed due to delays in obtaining the final surveys and title work for Tract RGV-GRC-2006. [Doc. No. 25].

ANTICIPATED NEXT STEPS

The United States plans to take the following steps to resolve this case:

(1) File a motion to consolidate this case (involving Tract RGV-RGC-2006) with Civil No. 7:08-cv-211 (Tract RGV-RGC-2024) and Civil No. 7:08-cv-021 (Tract RGC-RGC-2005) due to overlapping boundary issues. Specifically, based on completed surveys, it appears that the larger parcel for Tract RGV-RGC-2006 is actually composed of two separate properties, owned by the Escobar landowners and Luis Ernesto Gutierrez, respectively. Luis Ernesto Gutierrez owns the property to the east of Ada Escobar’s property, and is the owner of Tract RGV-RGC-2024 in Civil

No. 7:08-cv-211. It also appears that the larger parcel of Tract RGV-RGC-2005 in Civil No. 7:08-cv-021 is composed of two separate properties owned by Eduardo Yzaguirre and Ada Escobar respectively. As the diagram below shows, the black boundary lines are the boundaries described in the original Declarations of Taking for Tracts RGV-RGC-2005, RGV-RGC-2006, and RGV-RGC-2024, whereas the yellow boundary lines show the boundaries of Tracts RGV-RGC-2005, RGV-RGC-2006 (n/k/a RGV-RGC-2045), and RGV-RGC-2024, based on final surveys.



(2) After the motion to consolidate is filed, the Government expects to file a consolidated Amended Declaration of Taking and Complaint in Condemnation to (a) clarify the description and plat of the land acquired based on finalized surveys and title examination results; (b) clarify that the land taken did not include water distribution and drainage systems; and (c) add as defendants all new parties identified based on final title examination results. Afterwards, the United States will work with the landowners to resolve all remaining issues, including whether or not additional just compensation is warranted.

(3) Finally, the United States advises the Court that, in FY 2019, it expects to acquire additional property from this landowner for the border fence project.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 9, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and that our office will send a copy of this document on November 9 and 13th, 2018 via regular mail to all parties who have made an appearance and/or for whom the United States has contact information.

s/ Christopher D. Pineda
CHRISTOPHER D. PINEDA
Assistant United States Attorney